

- (ii) An agency promotion program;
- (iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts. Both the recovered material content and biobased programs require preaward certification that the products meet EPA or USDA recommendations. A second certification is required at contract completion for recovered material content; and
- (iv) Annual review and monitoring of the effectiveness of the program.

(b) *Exemptions.* (1) Agency affirmative procurement programs must require that 100 percent of purchases of EPA or USDA-designated items contain recovered material or biobased content, respectively, unless the item cannot be acquired—

- (i) Competitively within a reasonable time frame;
- (ii) Meeting reasonable performance standards; or
- (iii) At a reasonable price.

(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, all USDA-designated items (see 7 CFR 3201.3(e)) are exempt from the preferred procurement requirement for the following:

- (i) Spacecraft system and launch support equipment.
- (ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(d) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials or biobased products. When using either, the contract should specify—

(1) For products containing recovered materials, that the product is composed of the—

- (i) Highest percent of recovered materials practicable; or
- (ii) Minimum content standards in accordance with EPA's Recovered Materials Advisory Notices; and

(2) For biobased products, that the product is composed of—

- (i) The highest percentage of biobased material practicable; or
- (ii) USDA's recommended minimum contents standards.

(e) Agencies shall treat as eligible for the preference for biobased products, products from "designated countries," as defined in 25.003, provided that those products—

(1) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials or forestry materials in such product must be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

[72 FR 63043, Nov. 7, 2007, as amended at 77 FR 23367, Apr. 18, 2012]

23.405 Procedures

(a) *Designated items and procurement guidelines*—(1) *Recovered Materials.* Contracting officers should refer to EPA's list of EPA-designated items (available via the Internet at <http://www.epa.gov/cpg/products.htm> and to their agencies' affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.

(2) *Biobased products.* Contracting officers should refer to USDA's list of USDA-designated items (available through the Internet at <http://www.biopreferred.gov>) and to their agencies' affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including recycled or biobased content or related standards of the products (see 11.302(c)).

(b) *Procurement exemptions.* (1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless an exemption applies (see 23.404(b)).

(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file.

(c) *Program priorities.* When both the USDA-designated item and the EPA-designated item will be used for the same purposes, and both meet the agency's needs, the agency shall purchase the EPA-designated item.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008; 77 FR 23367, Apr. 18, 2012]

23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.223–1, Biobased Product Certification, in solicitations that—

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at 52.223–2.

(b) Insert the clause at 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, in service or construction solicitations and contracts, unless the contract will not involve the use of USDA-designated items at <http://www.biopreferred.gov> or 7 CFR part 3201.

(c) Except for the acquisition of commercially available off-the-shelf items, insert the provision at 52.223–4, Recovered Material Certification, in solicitations that—

(1) Require the delivery or specify the use of EPA-designated items; or

(2) Include the clause at 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

(d) Except for the acquisition of commercially available off-the-shelf items, insert the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding \$150,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(e) Insert the clause at 52.223–17, Affirmative Procurement of EPA-des-

ignated Items in Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008; 74 FR 2721, Jan. 15, 2009; 75 FR 53134, Aug. 30, 2010; 77 FR 23367, Apr. 18, 2012]

Subpart 23.5—Drug-Free Workplace

SOURCE: 54 FR 4968, Jan. 31, 1989; 55 FR 21707, May 25, 1990, unless otherwise noted.

23.500 Scope of subpart.

This subpart implements 41 U.S.C. chapter 81, Drug-Free Workplace.

[79 FR 24208, Apr. 29, 2014]

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

(d) By law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21707, May 25, 1990; 60 FR 34758, July 3, 1995; 60 FR 48248, Sept. 18, 1995; 68 FR 28082, May 22, 2003]